IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 20TH OCTOBER 2006 / 28TH ASWINA 1928

ST.Rev..No. 40 of 2003()

TA.220/1998 of STAT ADDL.BENCH, KOTTAYAM
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REVISION PETITIONER/REVENUE/RESPONDENT

THE DEPUTY COMMISSIONER (LAW)
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

RESPONDENTS: ASSESSEE/APPELLANT

M/S. ARYA JEWELLERY, K.K.ROAD,
KOTTAYAM.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 20/10/2006, ALONG WITH STRV NO. 127 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. Nos.40 & 127 of 2003

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Dated this the 20th day of October, 2006.

JUDGMENT

Ramachandran Nair, J.

Two revisions are filed by the State against common order of the Tribunal, one allowing the assessee's appeal and the other dismissing the Department's appeal arising from sales tax assessment for the year 1993-94. We have gone through the orders of the authorities below including that of the Tribunal. We have heard Government Pleader for the petitioner and counsel for the respondent-assessee. The respondent's place of business which is a jewellery shop was inspected twice during the relevant year. It was noticed that minor quantity of gold was shown as opening stock and purchase, but petitioner maintained 4.4 kgs of gold ornaments without showing it under opening stock or purchases. Since the petitioner could not explain the source of the new ornaments stock which is several times in quantity and value of the accounted stock, the officer treated it as excess stock and proceeded to make assessment. While verifying the books of accounts he also noticed that the respondent-assessee conceded non-maintenance of books of accounts and remitted a compounding fee of Rs.10,000/-. Both the first appellate authority and the Tribunal upheld the rejection of books of accounts obviously after rejecting petitioner's claim that excess stock found was stock supplied by wholesalers for sale or return basis. However, the first appellate

authority upheld the assessment of turnover but reduced purchase turnover of old ornaments at 80% of the sale value. On second appeal by the assessee, the Tribunal though upheld the rejection of books of accounts, changed the pattern of estimation to three times the conceded turnover. The department appeal filed against the reduction granted by the first appellate authority was dismissed. It is against this order of the Tribunal the State has filed separate revision petitions.

2.We are unable to uphold the different pattern of estimation of turnover adopted by the Tribunal for the reason that the actual turnover declared by the assessee has no relevance to reality is proved by the data gathered on inspection wherein it is seen that the physical quantity of gold ornaments found is several times the accounted quantify. The assessee's case that the physical stock found on inspection was jewellery supplied by wholesalers on sale or return basis does not stand proved. If assessee has any such case, the same should have been put forwards at the time of inspection and documents such as name and address of the supplier, security furnished or other contract whereunder supply is taken should have been furnished. The Assessing Officer therefore rightly declined to accept this theory and we find no justification for any of the appellate authorities to interfere with this. In fact if assessee maintains the stand that excess stock could be explained with evidence, we see no reason why the assessee should admit the offence and pay a high compounding fee of Rs.10,000/-. Estimation of turnover has to be always made on a realistic basis and in jewellery business it is an

accepted position that running stock is a safe method of estimating sales turnover because stock maintained which is investment is a reflection of volume of business that the dealer has. In fact this court has sustained estimation of turnover at several times of the running stock which goes even upto five times. Therefore, we reject the pattern of estimation of turnover adopted by the Tribunal as irrelevant and unacceptable to the facts of this case. However, since it is reported that the assessee has closed business, we do not think there is any need to send back the matter again for fixation of turnover by the Tribunal. Therefore, for the sake of finality and since the business is closed, we modify the Tribunal's order by directing the officer to fix Rs.15 lakhs towards sales turnover and to fix the purchase turnover of gold ornaments at Rs.12 lakhs. Since the appellate authority has stated that liability for tax arises on purchase turnover only from 1.1.1994, the levy will be limited only for one fourth of the said turnover. The revisions are disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated